

§ 10.61

§ 10.61 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in a pleading and the evidence adduced in support of the pleading, the Examiner may order or authorize amendment of the pleading to conform to the evidence: *Provided*, That the party who would otherwise be prejudiced by the amendment is given reasonable opportunity to meet the allegations of the pleading as amended; and the Administrative Law Judge shall make findings on any issue presented by the pleadings as so amended.

[31 FR 10773, Aug. 13, 1966, as amended at 42 FR 38354, July 28, 1977]

§ 10.62 Motions and requests.

Motions and requests may be filed with the Director of Practice or with the Administrative Law Judge.

[31 FR 10773, Aug. 13, 1966, as amended at 42 FR 38354, July 28, 1977]

§ 10.63 Representation.

A respondent or proposed respondent may appear in person or he may be represented by counsel or other representative who need not be enrolled to practice before the Internal Revenue Service. The Director may be represented by an attorney or other employee of the Internal Revenue Service.

§ 10.64 Administrative Law Judge.

(a) *Appointment*. An Administrative Law Judge appointed as provided by 5 U.S.C. 3105 (1966), shall conduct proceedings upon complaints for the disbarment or suspension of attorneys, certified public accountants, or enrolled agents.

(b) *Powers of Examiner*. Among other powers, the Examiner shall have authority, in connection with any disbarment or suspension proceeding assigned or referred to him, to do the following:

(1) Administer oaths and affirmations;

(2) Make rulings upon motions and requests, which rulings may not be appealed from prior to the close of a hearing except, at the discretion of the Administrative Law Judge, in extraordinary circumstances;

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(3) Determine the time and place of hearing and regulate its course and conduct;

(4) Adopt rules of procedure and modify the same from time to time as occasion requires for the orderly disposition of proceedings;

(5) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions;

(7) Receive and consider oral or written argument on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;

(9) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(10) Make initial decisions.

[31 FR 10773, Aug. 13, 1966, as amended at 42 FR 38353, 38354, July 28, 1977]

§ 10.65 Hearings.

(a) *In general*. An Administrative Law Judge will preside at the hearing on a complaint furnished under § 10.54 for the disbarment or suspension of a practitioner. Hearings will be stenographically recorded and transcribed and the testimony of witnesses will be taken under oath or affirmation. Hearings will be conducted pursuant to 5 U.S.C. 556. A hearing in a proceeding requested under § 10.76(g) will be conducted *de novo*.

(b) *Failure to appear*. If either party to the proceeding fails to appear at the hearing, after due notice thereof has been sent to him, he shall be deemed to have waived the right to a hearing and the Administrative Law Judge may make his decision against the absent party by default.

[31 FR 10773, Aug. 13, 1966, as amended at 42 FR 38354, July 28, 1977; 59 FR 31528, June 20, 1994]

§ 10.66 Evidence.

(a) *In general*. The rules of evidence prevailing in courts of law and equity are not controlling in hearings on complaints for the disbarment or suspension of attorneys, certified public accountants, and enrolled agents. However, the Administrative Law Judge